CONCEPT
concerning
THE NEED TO IMPLEMENT
ARBITRATION IN ADMINISTRATIVE JURISDICTION

The purpose of this Concept is to justify the need of adopting arbitration in administrative jurisdiction and to propose the possible practical steps in the development of its rules in the legislation of R. Bulgaria.

1. Legal essence of arbitration.

The arbitration procedure for settlement of disputes is well familiar to and has traditions in the legal system of Bulgaria. Arbitration as an out-of-court method of resolving disputes is widely applied in private law and particularly in the area of business relationships. Arbitration, most notably the international arbitration, is regulated by the law, has implementation traditions and abundant experience of arbitration practice.

By its legal nature, arbitration is a type of jurisdiction. By essence, it is a legal procedure, where the parties voluntarily entrust the examination of a dispute to an arbitration court rather than to the regular courts of justice. Arbitration has two significant aspects – it is both a contractual and a legal procedure. The contractual aspect is expressed in an arbitration agreement of the parties to settle the dispute through arbitration. The legal aspect is expressed in procedure rules for its activity and in the fact that the arbitrators, even if not being magistrates, observe the principles of the court process.

In terms of organization, the arbitration court is an institution, which administers justice as alternative to the state court of justice. In terms of function, the arbitration procedure is an extra-judicial tool for resolving disputes. Mediation is another similar tool.

The international practice employs two types of arbitration:

- **ad hoc (for the case)**, which is formed by virtue of a special clause in a written agreement , stipulating also the main rules for its formation and operation;
- **standing (institutional),** which is formed within an institution, usually a non-governmental organization. Its advantage before the ad hoc arbitration is that it works in accordance with a procedure known in advance (called regulation), that it has a list of arbitrators and that it has practice, which the parties can refer to.

2. Institutions of justice in the domain of administrative jurisdiction

Under the currently effective legislation in Bulgaria, administrative justice is exercised by administrative courts and special administrative jurisdictions. There is a trend of an ongoing expansion of the administrative courts' competence. This is a result of the democratic public development for the implementation of the general provision for the administrative jurisdiction, stipulated in art. 120 of the Constitution of the country.

Administrative jurisdiction is penetrating into further spheres of the public and the economic life.

According to published reports of the judiciary system, about 2400 administrative cases are initiated on the average per month in Bulgaria and their number is steadily increasing. Currently, the administrative cases are tried by the administrative divisions of the district courts, with the Supreme Administrative Court as the cassation instance. Statistics point that 14279 actions were initiated in the first half of 2006, which accounts for 17 % of the total number of initiated legal actions. The lawsuits in SAC have also increased, where in 2005 each judge resolved an average of 200 cases.

The adoption of the new Administrative Procedure Code /APC/ launched the process of modernizing administrative jurisdiction in compliance with the European requirements for a good administration. The practical implementation of the reform in administrative justice has started with the establishment of the new administrative courts, which will start operating on March 1st 2007.

The possibility to negotiate conciliation agreement in the administrative procedure is a novelty in the Bulgarian legal system and one of the tools for out-of-court settlement of disputes. Pursuant to art.20, par. 8 of APC, the conciliation will replace the administrative act and resolve administrative issues with the participation of the administration and all parties concerned. Conciliation may be reached both in the phase of producing the administrative act and in the phase of examining the dispute before the administrative court. Conciliation in administrative proceedings is expected to facilitate the resolution of disputes and to contribute for minimizing the court disputes.

Besides courts, administrative jurisdictions also administrate law as units within the structure of the executive authority, but in accordance with the judicature principles. Administrative jurisdictions are the Commission for the Protection of Competition, under the Law on the Protection of Competition, the Public Procurement Act and the Concessions Act, the Disputes Department a the Patent Office, under the Patents Act and Registration of Trademarks, the National Expert Medical Board under the Health Insurance Act, the Central Commission at the Ministry of Defense and the Bulgarian Army, etc.

The existence of the special administrative jurisdictions in the legal system is not accepted synonymously by the doctrine. According to some authors, administrative jurisdictions do not gave constitutional ground for their existence. The main argument in favor of this view is Constitutional Court Decision No. 22, case No. 18/1998, according to which “extrajudicial and administrative bodies in particular may not administrate justice because the Constitution precludes their existence”.

The advocates of the special administrative jurisdictions claim that they will facilitate greatly the courts of justice by undertaking a share of the administrative disputes. Some special jurisdictions were found by the new Constitution, but others are provided in laws operating in the new Constitution. International practice shows prevalence of

administrative jurisdiction in the British-American model, where they function as independent organs of the executive with quasi-legislative and quasi-jurisdiction authorities. Neither does the continental legal model reject the benefit from the administrative jurisdictions, which are involved with specific issues of the executive and are particularly well developed in Germany, France, Italy and Belgium.

Notwithstanding the theoretical disputes, the administrative jurisdictions are tending to expand their field of application. Typical example is the new rules for appealing the procedures for awarding public procurement contracts and concessions before the Commission for the Protection of Competition, the authorities under the Protection against Discrimination Act, the Radio and Television Act, etc.

The existence and the ever wider application of administrative jurisdictions is a favorable ground to substantiate the possibility of arbitration in the resolution of administrative disputes.

3. Advantages of arbitration in dealing with disputes

Arbitration as an out-o-court method for resolution of disputes has a number of advantages compared to the special jurisdictions, which are essentially administrative bodies and are subordinated to the central state administration. The administrative body as the author of the administrative act and the special jurisdiction controlling the legality of the same act are within one system – the Executive. This is the main disadvantage of the special jurisdictions because their impartiality becomes questionable as the basic principle of jurisdiction. Objective and efficient jurisdiction can exist only if real independence and impartiality of the juridical institution is available, which arbitration demonstrates in the following lines:

- **arbitration is an independent institution**. The arbitration court is an institution, which is formed within a non-governmental organization outside the structure of the state authority. In this meaning, the arbitrators are not part of the unitary state mechanism, they are not civil servants, their remuneration is not paid from the state budget and they are in no way related to the administrative apparatus.

  The status of the magistrates has a number of similar attributes with the status of the state servants. Their appointment, promotion, discharge and political independence represent them as a specific type of civil servants. The court system is supported by the judicature budget, which is part of the state budget.

  The employees in administrative jurisdictions are employees in the meaning of the Labour Code, or civil servants, and they definitely belong to the Executive;

- **arbitration is a voluntary institution.** The arbitration court is a body administrating justice, but is not part of the state authority. Its adjudication competence does not proceed from a supreme power, but from a voluntary

- **arbitration provides the opportunity to select arbitrators.** Each party in the arbitration proceedings selects an arbitrator and the two arbitrators select a third arbitrator, who will preside over the decision-making tribunal. This presumes a greater level of trust in the arbitration than in the tribunal of judges in the state court, where the cases are allocated to the judges at random. The parties under the dispute have a better opportunity to influence the outcome of the process;

- **arbitration presumes specialization of arbitrators in the subject matter.** The arbitration lists include lawyers with rich professional experience, who are recognized specialists in the respective area. It is difficult to achieve narrow specialization because the court panels examine cases of different subject matter. The modern development of jurisdiction requires narrower specialization due to the large number of specialized laws and the specialization of the instruments for the protection of human and civilian rights;

- **arbitration works for a small arbitration fee.** The active arbitrations operate with arbitration charges, which are smaller than the charges in the state courts of justice and the special jurisdictions. An important particular is that the arbitration charge is paid as a lump sum, while the court litigation requires payments for each separate instance and can be increased unpredictably any the additional court actions;

- **arbitration is distinguished with promptness of jurisdiction.** The examination of the dispute and the determination of an award are carried out for a comparatively short time. The arbitration proceedings stipulate the service of subpoenas with modern mechanisms. This minimizes the misuse of irregular summoning and makes it impossible to delay endlessly the hearing of cases on account of irregular summoning and chicaning the procedure;

- **arbitration provides a final settlement of the dispute.** The arbitration award becomes effective immediately and is not subject to appeal. After its pronouncement, it is subject to prompt execution. There is no possibility to appeal endlessly, to remand the case for a new hearing and to delay the final result. The only possibility to repeal an arbitration award is under the procedure of the extraordinary arrangements of CPC and before SCC. The grounds for repeal are

- **arbitration presupposes collaborative relationship between the parties under the dispute**. An important advantage of the arbitration treatment of disputes is the spirit of friendly and collaborative relationship. The parties in a court dispute frequently develop an extreme antagonism, which becomes even worse with the endless instances and sessions. The arbitration proceedings are a suitable way to avoid antagonism, because the decision-making composition has been selected by them and has not been assigned randomly. Relatively speaking, each party has its own representative in the decision-making tribunal;

- **arbitration proceedings involve the highest level of confidentiality of information.** Arbitration proceedings provide the necessary confidentiality of evidence, data and facts in the process, because arbitration operates in camera. This makes it possible to keep the commercial secret of the disputing parties. Court proceedings operate under the principle of publicity in examining the case and virtually, true confidentiality of the information cannot be achieved. The court proceedings are public and anyone may familiarize with the documents in the case file;

- **arbitration proceedings may be conducted in a foreign language.** The possibility to conduct the case in a foreign language is granted to the will of the parties and they may produce evidence in a foreign language. This possibility is practically absent in court proceedings, because all evidential materials in the state court must be translated into Bulgarian by an authorized translator and in certain cases the translations must be legalized as well. Very often this delays and makes the court process unnecessary more expensive.

4. Field of application for the arbitration in administrative jurisdiction

The main issue facing the adoption of arbitration in administrative jurisdiction is which administrative disputes can be subject to arbitration treatment. Given as premises the role of the state as the main subject of the public political organization, we have to maintain definitely the position that not all administrative disputes can be subject to arbitration procedure. With the issuance of acts, the administration resolves daily most diverse tasks within the public governance. The issuance of administrative acts is an expression of the state sovereign authority of administrative bodies, or bodies authorized to act as executive authorities and the scope of the regulatory impact is extremely broad – from national security, public order, healthcare, education, transport or fiscal issues up to a number of economic (economic and commercial) issues.

However, a large number of the administrative acts go beyond the scope of the direct state administration and reflect in the area of private economic activity. Such are the

cases of issuing permits for a particular business activity, issuing licenses, negotiating administrative contracts for activity on behalf and at the expense of the state, public-private partnership, outsourcing administrative services, etc. Other administrative acts generate indirectly civil legal consequences as an element of complex factual composition of negotiating contracts, such as public procurement contracts, concession contracts, public services contracts, etc.

The adoption of APC will include the civil disputes also in the scope of administrative jurisdiction. Such are the cases for compensations for damages caused by irregular acts and actions of the administration under the State and Local Government Liability Act for Damages /SLGLAD/ and unlawful actions in the enforcement of administrative acts. The declaratory actions, stipulated in the Code, establishing the existence of an administrative relationship (art. 128, par. 2) and the reduction improbation (art. 128, par. 1 p. 8) now fall within the cognizance of the administrative court and give a new possibility of dispute proceedings, for which the arbitration method is generally applicable. Such actions were examined in the past under the general civil procedure (art. 97 and art. 109 of CPC), because they are civil in essence. Such actions should be definitely provided with dealing by arbitration, so far as such possibility existed so far and its absence will disadvantage the subjects from the aspect of past legislation.

The juridical competence of the arbitration should cover also the disputes, which go beyond the scope of the main purpose or the essential tasks of the administration and which give rise to direct or indirect civil legal consequences. The businesses are well familiar with arbitration and are directly concerned with its implementation. The slow administrative jurisdiction is directly frustrating for the business because economically it is futile to achieve even a fair result, when such result is postponed for an indefinite time.

The practice of some European states and a number of normative acts of the Council of Europe contain arguments for the admissibility of arbitration in the administrative jurisdiction. Back in 1981, the Council of Europe adopted *Recommendation No. R (81)7 on the measures facilitating access to justice*, and in 1986 – *Recommendation No. (86)12, concerning measures to prevent and reduce the excessive workload in the courts.* With a special focus on administrative disputes, in 2001 the Committee of Ministers adopted *Recommendation No. R(2001)9 on the alternatives to litigation between administrative authorities and private parties*. According to p. 63 and p. 64 of *Recommendation No. R(2001)9*, arbitration should be applied in challenging acts, which have as consequence negotiating contracts with private parties. In the meaning of the Recommendation, arbitration may exercise indirect control on the legality of the produced administrative act, triggering rights (in personam) for the private parties. If the civil consequences of the produced administrative act are disputed, the arbitration may also rule on the legality of the administrative act. This category of acts should include also administrative acts, which are part of a complex factual composition of negotiating administrative contracts. The examples listed in the Recommendation are the public procurement contracts, public service contracts, provision of supplies and generally, acts and actions of state and local administration, which are not a direct expression of the supreme powers of the Executive in the fulfillment of its main purpose. Such legal relationships usually arise in the

management of economy, where they are not typical relationships of power and subordination, but they assume rather the nature of horizontal or diagonal administrative legal relationships, dominated by co-ordination and concerted actions. According to the Recommendation, arbitration is inapplicable in disputes concerning administrative acts, which settle the essential tasks of the administration.

Examples of admissible arbitration in the disputes between the state administration and the citizens and their organizations can be found in some national European legislations such as Italy, Portugal, Greece, etc.

With a view to the requirements of the quoted recommendations and the experience of several European member-states, we can draw the conclusion that arbitration can be applied the following cases in administrative jurisdiction:

- administrative disputes, which are civil in essence, but by virtue of APC are referred to the administrative jurisdiction. Such are the disputes concerning compensations for damages caused by unlawful actions and inactions of the administration and concerning administrative acts, which are issued by administrative organs, but which have direct or indirect civil consequences and which concern the business sector.

- disputes generated by administrative acts, issued by private legal subjects (organizations) with administrative authority in the meaning of §1, p.1 of the AP Code. Most of them have direct civil legal consequences in the economic sector, or represent in essence the provision of public or administrative services in particular.

- arbitration is inadmissible in the direct challenging of acts, which ensure the functioning of the state and which exercise direct supreme powers. Such are the acts in the areas of state security, public order, public healthcare, conducting elections, fiscal issues, etc. The provision of art. 128, par. 3 of APC should be interpreted in this meaning. It reproduces some exceptions from the general clause for litigation de lege lata under the Administrative Procedure Act. It is impossible to find application of the alternative arbitration procedure in the cases, which preclude a court procedure for challenging the legality of administrative acts.

5. Proposals de lege ferenda

The possibility to challenge administrative acts before arbitration is determined by the available legal arrangement in the effective legislation. If arbitration is to exist as an alternative to court litigation, it should be regulated at the respective normative level. Such regulation is most appropriate for APC, which is the main law on the procedures for the issuance, challenging and enforcement of administrative acts. The provision of art. 20 in the Code is the conceptual basis to develop alternative means for the protection of civil rights and interest and citizens organization, a well as supervision on the acts and action

of the administration. Art. 20, par. 2 of APC explicitly provides for a possibility to negotiate agreement between the administrative authority and the citizens, and according to par. 3, the agreement may also refer to challenging acts or actions of the administration. Even if this provision generally treats the possibility of replacing the administrative act with an agreement between the citizens and the executive authorities, it already points to a new thinking about the state-citizens relationships and is a reasonable basis for the stipulation of the arbitration procedure in challenging administrative activity

APC should regulate the general possibility for challenging administrative acts before arbitration. The regulation should be explicit and clear, and not blanket. This may be achieved with the introduction of a new Chapter – Chapter 15a – in section three of APC, entitled "Dispute before an arbitration court". This Chapter should provide for the general possibility to dispute administrative acts before arbitration, the main principles of arbitration proceedings, the methods to reach arbitration agreement, the competent arbitration courts, the authorities of the arbitration court, the nature of the arbitration award and its eventual repeal under the extra-judicial control by SAC. Special arrangement should be produced concerning the initiation, the interruption and the cessation of the arbitration case, the rules for accepting evidence and summoning.

An essential issue in the legal treatment of dealing with disputes by arbitration is which types of administrative acts are subject to challenging by arbitration procedure. With a view to the nature of the different types of administrative acts, regulated in APC, it should be noted that this possibility should be adopted only for the individual administrative acts. The essential attributes of the general administrative acts, such as generating rights and obligations for an indefinite, even if definable, circle of legal subjects, render arbitration challenging inapplicable is such cases or extremely difficult. The indefinite circle of affected parties, however, may resolve critical situations with certain particular administrative services and contracts with general conditions. Such situations may arise in the area of electric supply, communications, water supply or other activities, for which Constitution allows monopolistic practice.

Being a voluntary procedure, arbitration is possible only for a specific legal dispute with exactly defined parties. Therefore, the arbitration clause is inadmissible for challenging the normative administrative acts, since they involve, besides the indefinite circle of addressees, rule-making power of the administration, which is an expression of state sovereign competence and which may not be evaluated by a non-governmental control body.

To achieve an efficient regulation of the arbitration procedure for the treatment of administrative disputes, we need to have also adequate rules for the enforcement of arbitration awards. To this end, it will be necessary to make the respective amendment in Section Five of APC, which refers to the enforcement of administrative acts and court decisions. Since arbitration is an alternative to court, the arbitration award replaces the court decision and in this meaning art. 268 of the Code should be supplemented with the arbitration award as a type of grounds for enforcement.

The remaining part of the enforcement rules in APC is general and could be applied also with respect to arbitration awards. The arbitration awards shall comply with the rules for commencement, suspension, cessation and termination of the enforcement, the enforcement against citizens, organizations and administrative bodies, the claim defense, the appeal of actions by the enforcement body and rules for compensation.

The possibility of challenging administrative acts by arbitration could be stipulated also in special laws. This is primarily appropriate in the cases, where the special laws provide a particular procedure to dispute administrative acts in the respective area as variation from the general legal regulations for challenging. By way of example, we can quote the appeal of procedures on public procurement awards under the Public Procurement Act, on concessions award under the Concessions Act, on issuing licenses and permits under the Waste Management Act, on issuing licenses under the Commodity Exchanges and Commodity Markets Act, on issuing permits for exercising therapeutic activity under the Hospitals Act, on issuing certificates under the Wine and Spirits Act, on issuing permits under the Sowing and Planting material Act, appeals on registrations under the Food Act, appeals on registrations under the Feeds Act, on issuing licenses under the Grain Storage and Trade Act, etc.

Following the general legal regulation in APC, the currently operating arbitration courts will need to undertake measures for amendments and supplements to their rules corresponding to the specific aspects of the procedure for challenging administrative acts. It would be more effective to arrange this arbitration procedure in separate rules, which will regulate in detail the process of examining administrative disputes by the respective arbitration court.

From the practical aspect, new arbitration courts may emerge, aiming to specialize in the treatment of administrative disputes. Such specialization of the arbitration courts will provide the foundation for better and more efficient jurisdiction. Practice will show whether this is the most successful path for the development of the arbitration procedure in the treatment of administrative disputes.

In the long-term perspective, the possibility of drafting and adopting an Administrative Arbitration Act similar to the Law on International Commercial Arbitration could be considered. Such possibility should build on an abundant experience with and impact analysis of the amendments in APC with respect to administrative arbitration.

6. Powers of the arbitration court

One of the main issues facing the legal regulation of arbitration in administrative jurisdiction concerns the powers of the arbitration in the cases of establishing irregularity of the administrative act. The settlement of this issue will reflect on the perception of the arbitration as a valid alternative to the administrative court and on the efficiency of the arbitration award.

In accordance with art. 172 of APC, the administrative court has the power to proclaim the nullity of an administrative act, to amend it and repeal it, and in accordance with art. 173 of APC, it has also the power to decide the case on its merits, i.e., to replace the administrative body by issuing a new administrative act.. This possibility granted to the administrative court is not typical in jurisdiction, whose main function is exercising supervision on the acts issued by the executive. It is based on the need of achieving promptness and procedural economy in juridical supervision and on the public concern in the issuance of legal administrative acts. With a view to the two-stage administrative jurisdiction, it cannot be publicly justified, when the legal decision is only one, but the court returns the file to the administrative body.

The regulation of the powers granted to the arbitration court should reproduce the powers of the administrative court as its voluntary alternative. Should the power of the arbitration court, however, be completely identical with the powers of the administrative court?

To resolve this issue, the specific facts of the arbitration should be taken into account, as well as the Recommendation of the Council of Europe quoted above. On the one hand, the arbitration court is not part of the state authorities system and in this meaning, it is denied "imperium" (state supreme power). With a view to this aspect, we should acknowledge that the arbitration court cannot replace the administrative body in its constitutionally recognized function to settle issues of administration nature. Similar logic is contained in the provisions of art. 63 and art. 64 of *Recommendation No. R(2001)9 on the alternatives to litigation between administrative authorities and private parties,* pursuant to which the alternative mechanisms have no place in the settlement of the essential administration tasks.

Besides, we should bear in mind also that the arbitration could not bear responsibility in the public legal meaning of the concept and, respectively, could not replace the administrative body by issuing a new administrative act, when its illegality has been. The competence of arbitration to administer justice should be reduced only to establishing (finding) an irregularity of the administrative act and its repeal, but not to substituting the power of the administrative body to issue a new administrative act compliant with the law. In the meaning of the CE Recommendations, arbitration should not have such sovereign competence, which is inherent to the administrative organ. When the file is returned, the administrative organ should be bound with the motives for repeal of the administrative act and the instructions given regarding the implementation of the law. The argument for this is the voluntary agreement of the administrative body to grant juridical competence to the arbitration rather than to the administrative court. The choice is binding for the administrative body and should comply fully with the pronounced decision.

7. Arbitration agreement

From the practical aspect, the possibility of arbitration treatment of disputes exists only if a contract contains an arbitration clause, which happens all the time in disputes

proceeding from non-performance of negotiated contracts. A significant feature of administrative proceedings is that no contract is negotiated for the issuance of administrative acts. In many cases, the contract is a consequence from the issued administrative act and is signed after its enactment. This is often emphasized as argument for inadmissibility of arbitration in administrative jurisdiction. However, we should take into account the fact that even in commercial arbitration there are occasions, where the consent to arbitration is not necessarily contained in the negotiated contract. These cases are regulated in art. 7 of the Law on International Commercial Arbitration /LICA/, which allows consent to arbitration with non-contractual relationships, where the parties do not sign a contract. In such cases, the consent to arbitration is materialized in a separate agreement, signed by the parties. Examples of such arrangement can be found also in the Bulgarian legislation. The amended Public Procurement Act stipulated a possibility to sign an arbitration agreement when commencing the procedure for awarding public procurement contracts (art.121 of PPA, canceled revision from 2004)

The particular choice of how to reach consent to examination of a dispute by arbitration is a legal technical issue. From this aspect, any administrative organ, which acknowledges this possibility of challenging its acts before arbitration, is free to express its volition for arbitration agreement by using the forms of general terms and conditions, internal rules, general arbitration clause, etc. The party affected by the administrative act will be entitled to choose. It could choose the arbitration procedure for settlement of disputes by referring the dispute before arbitration, or it can prefer the court procedure for litigation by filing an appeal to the administrative court or the special jurisdiction.

The currently effective legislation and the rules of the arbitration courts give a further possibility to choose the arbitration procedure for challenging. This is the hypothesis of direct referral to a selected arbitration court without having in advance an arbitration agreement. In accordance with art. 7, par.3 of LICA, it is considered that the arbitration agreement is evidenced in writing also when the defendant in an arbitration case accepts in writing or by declaration, recorded in the minutes of the arbitration hearing that the dispute shall be settled by the arbitration or in case he participates in the arbitration proceedings without challenging the competence of arbitration. This possibility is theoretically qualified as “presumption” for the availability of arbitration agreement and it could be used successfully for the regulation of arbitration in administrative jurisdiction.

Still another possibility is under consideration, termed “presumed consent of the administration”. The presumed consent of the administration will be present if the administrative officer or collective body, representing the department (principal in business companies with government or municipal share), takes a decision, by virtue of which it will stipulate the fundamental possibility for challenging administrative acts before arbitration, while granting the choice between arbitration or court procedure to be made by the affected citizens and organizations. In this meaning, if any of the affected parties challenges the administrative act and refers the dispute before an arbitration court selected by him, the administration will be bound by such choice. Similar decision may be taken by the Council of Ministers (or the Minister of State Administration and

Administrative Reform on the force of art. 5a of the Administration Act) concerning the administrative acts of the Executive. Concerning the acts of the local government, such decision could be taken by the respective Municipal Council, and the manager of the organization will be the body to decide the issue of challenging the acts issued by private legal subjects empowered with administrative authority.

One more possibility is provided for the administrative body at the commencement of the procedure for the issuance of administrative act. Pursuant to art. 26 of APC, during the preparatory stage of the procedure for the issuance of the administrative act, the administrative authority – author of the act, shall inform all concerned individuals and organizations about the commencement of the procedure. It is possible for the administrative authority – author of the act, to take the initiative and provide the option of challenging the future administrative act before arbitration. The procedure for the issuance of the administrative act may commence ex officio, by the undertaking of the administrative authority – author of the act, who may include a text for arbitration agreement and send it to the concerned individuals and organizations together with the notice of opening administrative proceedings. Thus, all concerned individuals and organizations will be notified in advance about such possibility. Provided that they agree, if they are dissatisfied subsequently with the issued administrative act, they be entitled to choose – either referring the dispute to the specified arbitration court or appealing before the administrative court or the special jurisdiction in compliance with the general procedure or the procedure stipulated in the special law.

From the legal technical aspect, optimum solution will be achieved when the administrative authority stipulates in advance with structural rules or internal rules, and regulates generally the possibilities of challenging the administrative acts produced by it before arbitration. The regulation of his possibility may provide a general or specific option (with exact identification of selected arbitration court). The option to choose either arbitration or court procedure for challenging should be granted to the affected citizens and organizations.

8. Expected results from the implementation of arbitration in administrative jurisdiction. Cost of the change

The practical result to be achieved with the implementation of arbitration in challenging administrative acts is reducing the workload in the courts and particularly in the Supreme Administrative Court. The effect will be fewer cases in the court, faster settlement of disputes and higher efficiency of the court system. One of the main reasons for the inefficiency of the Bulgarian court system is its excessive workload. Arbitration is the real opportunity to reduce the excessive workload in the administrative courts by taking some of the administrativecases. Consequently, the courts will concentrate on examining more important and publicly significant cases, while the Supreme Administrative Court will be able to perform its constitutionally assigned role and exercise supreme judicial supervision for the exact and uniform implementation of laws in administrative

jurisdiction. This will also improve the quality of administrative acts issued by the magistrates, since they will be able to devote more time on the resolution of a case.

All actors in the process of issuing administrative acts will benefit from adopting arbitration in administrative jurisdiction. By allowing arbitration in administrative jurisdiction, the businesses will be able to enjoy the advantages of the arbitration procedure, such as promptness, efficiency, transparency and confidentiality. The parties will definitely profit from the prompt resolution of administrative disputes, within one or two months, which on the background of 2 to 3 years court proceedings is a great advantage. The procedure before the arbitration court is transparent, because each litigant party chooses its own arbitrator, who is part of the decision-making tribunal. To put it figuratively, each disputing party has its own representative in the decision-making tribunal. This reduces to a minimum the possibility of illegal impact on the tribunal settling the dispute. Quite often, the parties to a business dispute need confidentiality, which is difficult to achieve in a state court of justice, where the principle of publicity operates.

Arbitration will reflect also on the efficient work of the administration. There have been many unfair parties, profiting from the lengthy procedure of the court litigation with the single aim to suspend the execution of the administrative act. By rule, challenging has a suspension effect and respectively stops the execution of the act. Allowing immediate execution is an exception and it is not recommendable for a wider implementation due to the risk of subsequent repeal of an executed act, which will create greater problems and generate new claims for compensation of the affected parties. In this meaning, the prompt resolution of the dispute and the issuance of a sound administrative act is a good option for the administration to deal efficiently with executive issues.

Another practical effect from the implementation of arbitration in challenging administrative acts is the compliance with the requirements contained in the Recommendations of the Council of Europe, which establish that the excessive load of the courts derogates the right to hearing the case in reasonable time, as stipulated in art. 6.1 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. One of the conclusions drawn in these European acts is that conciliation, arbitration and mediation are tools, which, if used widely, could reduce the excessive workload in the courts of the European states. The alternative (out-of-court) mechanisms are simpler, more flexible and offer faster and cheaper resolution of disputes and their wide implementation in settling disputes may bring the administration closer to the public. The out-of-court methods encourage participation of citizens in the activity of the administration and provide the public with better information about it. In this way, the administration will become more available to the citizens and at the same time – better informed on the public opinion.

The implementation of arbitration in administrative jurisdiction will overcome some of the criticisms towards the court system, evidenced in the reports of the European Commission and will reduce the risk from discouraging foreign investors due to uncertainty in justice. A good way to resolve the existing problems in the judiciary

system and to approximate Bulgaria to the models of modern jurisdiction is the wider implementation of the out-of-court methods for the settlement of disputes.